

EF 63-1385

DD/S: 63-0992

Info Fr. (3-1)
Sldg 4 (General)

15 February 1963

MEMORANDUM FOR: Executive Director

SUBJECT : Review of Legal Principles Governing the Operation of the Director's Mess

1. Paragraphs 6 and 7 of this memorandum contain recommendations for the concurrence of the DD/S, OGC, and Comptroller and for the approval of the Executive Director.

2. The Director's Dining Room was established in February 1952 to provide the DCI, the DDCI, and senior Agency officials a dining room which is physically secure and serviced by cleared personnel where official functions of operational or representational nature can be held.

3. The legal basis for the use of Agency funds for the establishment and continued maintenance of this facility has been subjected to periodic review, and there are three formal statements by the OGC on this subject, one in July 1956, one in July 1958, and one in January 1959.

[redacted] Assistant General Counsel, included the following statement in his memorandum of 18 July 1956:

"The desirability of an executive dining room in which senior officials of the Agency can get together for lunch, is not questioned. A good deal of business is transacted at these luncheons. An opportunity is afforded to bring together groups whose otherwise busy schedule might preclude such a meeting if it were not arranged at the meal hour when everyone has to get away from his desk anyway. Since the desirability of such an arrangement is apparent for any Government agency, it might have been difficult in the first instance to sanction solely an executive dining room in the absence of specific statutory authority, although the special security requirements of the Agency would lend some strength to the argument. However, where the dining room has been established by the Director for a justifiable official purpose, its use by his senior officials when it is otherwise

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unoccupied seems proper so long as they pay for their own food. There might be some question of the legality of assigning two couriers part-time as waiters, but practices of this sort are not entirely unknown in the Government. (For example, there is no general provision in law providing for a recreation and services officer in the various departments and agencies; nevertheless, some employee or employees in every department seems to have that function."

The results of this opinion established the following: members of the Executive Dining Room paid for the cost of their own food (even when attending official functions), the charge at that time was a flat fee of \$1.00 per lunch. All other overhead costs (salaries, laundry, food consumed by the guests, supplies and equipment) was paid for out of Confidential Funds. It should be noted that the regulation governing operational entertainment at that time [redacted] required Agency personnel engaging in operational entertainment to reimburse the Agency \$1.00 as a token payment for food and drink consumed in the course of Operational Entertainment.

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4. Paragraph 4 of the [redacted] opinion (Tab A) raised, for the first time, the issue of assessing Mess members a charge in addition to the cost of food which was to be used as a contribution to general overhead. It is not completely clear what [redacted] meant by this paragraph but a subsequent statement on this subject by [redacted] (then DCI Executive Officer) which was concurred in by the OGC, the Comptroller and the Acting DD/S, clarified the issue (see Tab B). Tab B resolved the Director's position on the establishment of the Mess (as raised in paragraph 4 of the [redacted] opinion) and clearly stated:

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"Since the Director determined that the establishment of dining facilities was basically to fulfill a necessary official function, I feel that these overhead expenses (sic) spoilage of food, free meals to kitchen personnel, salaries of mess personnel, laundry costs, and the costs of heat and light, constitute a reasonable charge which should be borne by the Agency."

This memorandum reaffirmed the principle of charging members \$1.00 per meal and established the principle that any deficit incurred as a result of the various overhead charges in the operation of the Mess over and above the amount collected from the members was to be paid from Agency funds.

5. In planning for expanded operations of the Director's Mess which would result from the move to Langley, [redacted] raised the issue of payment of salaries for additional personnel. Tab C sets forth the principle that personnel needed for the operation of the kitchen and the Director's small dining room

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[redacted] should be paid for out of Agency funds and [redacted] that waiters used in the large dining room [redacted] and two others) would be handled as a reimbursable expense item to the Agency. At that time it was felt that three waiters working between 11:30 and 1:30 could handle the large dining room serving no more than 25 or 30 customers. On this basis the waiters working in the large dining room would be considered part-time help and their main jobs would be messenger or laborers for Logistics. To cover their part-time salaries, it was recommended that the price of meals be increased by \$.25 per meal and that the Agency be reimbursed \$.25 for each meal served members. It should be noted that this procedure was adopted before the dining room was in operation in Langley and without benefit of a cost experience factor or knowledge of actual labor required to maintain the new facility. Tab D is a memorandum from Chief, TAS setting forth these new procedures.

6. Subsequent experience indicates that the assumptions upon which this reimbursement was computed were in error. I, therefore, recommend that this commitment be abrogated retroactively for the following reasons:

a. The expanded operations of the Mess required the full-time assignment of three waiters for the large dining room; mess membership has increased to a total of 212 and will continue to increase with a total anticipated membership of 250. Instead of the 25 to 30 customers a day planned in the Bricker memorandum of January 1962, we are now averaging 55 meals a day, and this is expected to increase considerably.

b. All Mess personnel now appear on the T/O of the Director's Office and, although waiters perform many other functions not related to the dining room, their primary job is concerned with the operation of the Mess. Consequently, the \$.25 per meal reimbursement does not cover salary expenses of the waiters assigned to the large dining room, but would represent a mere token contribution to salary overhead.

c. In spite of the agreement to reimburse the Agency \$.25 per meal (commencing March 1962), this has not been done, and at first glance it would appear that the Mess fund has an outstanding liability to the Agency of some \$1,717.50

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for the period March 1962 through 15 January 1963. However, what has happened is that the Mess fund has been absorbing certain overhead costs previously paid out of Confidential Funds. For example, during the period 5 March 1962 through 15 January 1963 there was a total of 8,750 meals served to members, which would indicate a liability of \$2,187.50 to be reimbursed to Confidential Funds. In fact, the Mess fund reimbursed the Agency a total of \$469.80 in cash and absorbed a total of \$2,299.20 in overhead costs which, prior to March 1962, would have been paid for out of Confidential Funds according to the principles established in [redacted] memorandum of 9 January 1959. A breakdown of these overhead costs is as follows (meal prices based on average cost of food):

Laundry	\$ 630.70
Meals for guests - 223 @ \$1.00	223.00
Meals for Mess personnel - 1,365 @ \$1.00	1,365.00
Coffee for USIB Conferences	80.50
	\$ 2,299.20

On this basis the Mess fund has contributed more than the \$.25 per meal surcharge on members' food bills (the \$1,717.50 liability being more than wiped out by the \$2,299.20 contribution to overhead expenses).

7. Based on legal principles already established as outlined above, and in recognition of the desire to have members make some contribution to salaries paid Mess personnel, it is recommended that this best be done by having the Mess fund absorb certain overhead expenses previously paid for out of Confidential Funds rather than being held to a flat rate per meal as suggested in the [redacted] memorandum of January 1962. The resulting figure may be more than or less than the original \$.25 per meal and would fluctuate based on volume, cost of food, and pricing structure, but would, in my opinion, satisfy the legal question raised by [redacted] that members make some contribution to salary overhead. Furthermore, any profits accruing to the Mess shall be refunded to the Agency at least on an annual basis and more frequently if circumstances so warrant. Under this formula, overhead expenses to be absorbed by the Mess fund shall include: laundry, meals and beverages for guests, meals for mess personnel, coffee for USIB conferences, and purchase of small items of supplies and equipment. It is

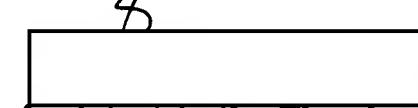
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felt that the current price structure of meals (i. e. \$1. 50 for the Steak Special, \$1. 25 for the Regular Lunch, \$. 75 for the Light Lunch, \$. 20 for soup and \$. 20 for dessert) is a reasonable charge for meals served and is high enough to absorb the aforementioned overhead expenses. The Mess Officer will review the menu price structure on a quarterly basis and make necessary adjustments reflecting increases or decreases in costs of food. In the event that income from members is insufficient to cover the aforementioned overhead costs (as well as the cost of food), particularly since the meals furnished guests (This does not include U. S. Government employees who may be guests, except when specifically approved by appropriate authority) are an uncontrollable variable, the Mess Officer reserves the right to bill the Agency for meals furnished guests should this item become too much of a burden on the Mess fund.

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Assistant to the Director

**CONCUR in Recommendations in
Paragraphs 6 and 7:**

Believe question of approving Government payment for meals of Government employees, and appropriate authority for such action, may require further consideration.

APPROVE:

JG

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for General Counsel 7 MAR 63

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Executive Director

b John A. Brose
Comptroller 8 MAR 63

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Acting Deputy Director (Support)

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